

### **REMARKS**

Claims 1-25 are currently pending in this application. By the present amendment, claims 1, 3, 5, 7, 16, 19 and 20 have been amended; claims 2, 4, 13, 14, 17, 18, and 21-25 have been canceled and new claims 26-34 have been added. As will be discussed more fully below, it is believed that these amendments address all outstanding issues in the case and place all remaining claims in condition for allowance. Reconsideration is thus respectfully requested in light of the above claim amendments and the following remarks.

#### **Drawings**

Replacement figures are submitted herewith correcting the informalities noted in the Draftsperson's Comments. In addition, a replacement sheet for Fig. 22 has been submitted correcting an informality noted in a related case by the Draftsperson. Approval of the replacement sheets is respectfully requested.

#### **In the Specification**

Paragraph [0001] has been amended as required by the Examiner's.

#### **35 U.S.C. § 112 Rejections**

The Examiner has rejected claim 16 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 16 has been amended in accordance with the Examiner's recommendation.

35 U.S.C. § 102 Rejections

The Examiner has rejected claims 1, 10, 11, 15, 16, 19 and 23 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,554,177 to Kieval et al. The Examiner has rejected claims 1, 10, 12, 15, 16, 19 and 24 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,836,987 to Baumann et al. Further, claims 2-9, 13, 14, 17, 18, 20-22 and 25 have been indicated as being allowable if rewritten in independent form.

Claim 1 has been amended to include the limitations of claim 2 which has been canceled. Since claim 2 was indicated as being allowable, claim 1 should now be in condition for allowance.

Claim 3 has been rewritten in independent form and should now be in condition for allowance.

Claim 4 has been canceled and rewritten in independent form as new claim 26. Claim 26 should be in condition for allowance. Claims 5 and 6 depend directly or indirectly from claim 26 and should thus also be in condition for allowance.

Claims 7 has been rewritten in independent form and should now be in condition for allowance. Claims 8 and 9 depend directly or indirectly from claim 7 and should thus also be in condition for allowance.

Claims 10-12, 15 and 16 depend directly or indirectly from amended claim 1 and as such should be in condition for allowance.

Claim 13 which was indicated as being allowable has been canceled and rewritten in independent form as new claim 28 and as such should be in condition for allowance.

Claim 14 which was indicated as being allowable has been canceled and rewritten in independent form as new claim 29 and as such should be in condition for allowance.

Claim 17 which was indicated as being allowable has been canceled and rewritten in independent form as new claim 30 and as such should be in condition for allowance.

Claim 18 which was indicated as being allowable has been canceled and rewritten in independent form as new claim 31 and as such should be in condition for allowance.

Claim 19 has been amended to include the limitation from claim 20 of “a photo-plethysmography sensor for producing a signal ...”. In view of this amendment it is believed that claim 19 is patentable over the cited references. Allowance is respectfully requested.

Claim 20 has been amended and depends from amended claim 19 which is believed to be in condition for allowance. Allowance of claim 20 is respectfully requested.

Claims 21, 22 and 25 which were indicated as being allowable have each been canceled and rewritten in independent form as new claims 32, 33 and 34, respectfully, and as such should each be in condition for allowance.


Claims 23 and 24 have been canceled.

Applicant respectfully submits that claims 1, 3, 5-12, 15, 16, 19, 20, and 26-34 of the present application are in condition for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call Steven M. Mitchell at (408) 522-6101.

Pursuant to 37 C.F.R. 1.136(a)(3), Applicant hereby requests and authorizes the U.S. Patent and Trademark Office to (1) treat any concurrent or future reply that requires a petition for extension of time as incorporating a petition for extension of time for the appropriate length of time and (2) charge all required fees, including extension of time fees and fees under 37 C.F.R. 1.16 and 1.17, to Deposit Account No. 22-0265.

Respectfully submitted,

Dated: 12/11/06

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